Supreme Court, U.S.
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in the

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1670

AVIS RENT-A-CAR SYSTEMS, INC.,
Appellant,

vs.

CHARLIE VINING and
VELMA VINING, his wife,
Appellees.

On Appeal from the Supreme Court of Florida

JURISDICTIONAL STATEMENT

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NO.

AVIS RENT-A-CAR SYSTEMS, INC.,
Appellant,

vs.

CHARLIE VINING and
VELMA VINING, his wife,
Appellees.

On Appeal from the
Supreme Court of Florida

JURISDICTIONAL STATEMENT

Avis Rent-A-Car Systems, Inc., appellant, appeals from the final judgment of the Supreme Court of Florida, dated November 29, 1979, reversing the Circuit

Court of the Eleventh Judicial Circuit in and for Dade County, Florida, which latter court in an Amended Order determined that §316.097, Florida Statutes (1971), and §30-249 of the Metropolitan Dade County [Florida] Code denied to the petitioner Equal Protection of the Laws contrary to §1 of the Fourteenth Amendment of the Constitution of the United States.

OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at 378 So.2d 280 (Appendix A hereto). The amended order of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, is not reported but appears in Appendix C hereto.

JURISDICTION

The judgment of the Supreme Court of Florida holding §316.097, supra, and §30-249 of the Metropolitan Dade County Code, not to be violative of the Equal Protection Clause of the Fourteenth Amendment was entered on November 21, 1979 (App. A). A motion for rehearing was timely filed and denied on January 23, 1977 (App. B).

A notice of appeal of this Court was timely filed in the Supreme Court of Florida on April 14, 1980 (App. B).

This Appeal is being docketed in this Court within ninety days from the denial of rehearing below.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2).

QUESTION PRESENTED

Whether §316.097, Fla.Stat., the Unattended Motor Vehicle Statute, is repugnant to the Equal Protection of the Laws Clause of the 14th Amendment where said statute was promulgated by the legislature to prevent motor vehicle theft and to protect the public from hazardous driving by automobile thieves where delivery vehicles are excepted from the operation of the statute.

CONSTITUTIONAL PROVISIONS AND FLORIDA STATUTES

Fourteenth Amendment, United States Constitution, §1:

> " . . . nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

Section 316.097, Fla.Stat. (1971) renumbered 316.1975, Fla.Stat. (1977):

> "316.1975 Unattended motor vehicle — No person driving or in charge of any motor vehicle *except a licensed delivery truck or other delivery vehicle while making deliveries,* shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key. No vehicle shall be permitted to stand unattended upon any perceptible grade without stopping the engine

and effectively setting the brake thereon and turning the front wheels to the curb or side of the street." (Emphasis added.)

RAISING THE FEDERAL QUESTION

Appellant filed a motion for determination of the constitutionality *vel non* of the Florida Unattended Motor Vehicle Statute, to wit: §316.097, Fla.Stat. (1971),[1] and the Metropolitan Dade County, Florida Code §30-249, as the same were alleged to be in violation of the Fourteenth Amendment of the United States Constitution by denying to the Appellant Equal Protection of the Laws under §1 of the Fourteenth Amendment.

The Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, held §316.097, Fla.Stat. (1971) and the Metropolitan Dade County Code §30-249, to be violative of the 14th Amendment of the United States Constitution by denying to the appellant Equal Protection of the Laws contrary to §1 of the Fourteenth Amendment (App. C).

The Supreme Court of Florida reversed the trial court's adjudication that the statute was repugnant to the Constitution (App. A).

[1]Chapter 76-31 §1, Laws of 1976 renumbered without amendment §316.097 to §316.1975, Fla.Stat. (Supp. 1976). The constitutionality *vel non* of the statute and code is raised in the Amended Answer to the Third Amended Complaint.

STATEMENT OF THE CASE

The genesis of this cause was an action by the appellees seeking damages for injuries sustained when an automobile in which they were riding collided with appellant's automobile rental agency's stolen automobile (see Opinion of *Vining v. Avis* at 554 So.2d 54).

The Supreme Court of Florida held in *Vining v. Avis, supra,* that if the appellees who alleged that they were involved in a collision with appellant's rental automobile driven by a thief who stole the automobile which was left unattended in a parking lot at an airport with the keys in the ignition, the doors open, and car lights flashing, could establish that violation of the "Unattended Motor Vehicle" statute was the proximate cause of the injuries, appellees would be entitled to recover damages for the injuries sustained in the collision.

Subsequent to the remand of the aforesaid decision reinstating the appellees' complaint, the appellant filed a motion for determination of the constitutionality *vel non* of the Florida Unattended Motor Vehicle Statute, to wit: §316.1975, *supra.*

The Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County entered an amended order determining that the statute in question as well as a Metropolitan Dade County Ordinance, to wit: Section 30-249 (which ordinance tracks the language of the statute) were unconstitutional as being repugnant to the

14th Amendment of the United States Constitution by denying appellant Equal Protection of the Laws (App. C).

The Dade County Circuit Court held that the unattended motor vehicle statute arbitrarily and unreasonably exempted a licensed delivery truck or other delivery vehicles while making deliveries from the restrictions imposed by the statute on the appellant (App. C).

Further, the Court found that the exemption of delivery trucks from the restrictions imposed by the statute constituted an unreasonable classification and a classification based upon no practical differences. Also, the statute was found to create an exception for delivery vehicles without any rational or reasonable basis thus creating a legislative classification which was purely arbitrary and erroneous.

The trial court stated:

"It is patently evident that allowing a delivery truck to be exempt from the requirements of the statute is antithetical to the legislative scheme of protecting the public, inasmuch as, this type of vehicle by being permitted to stand unattended with the engine running (and merchandise, etc., inside) is more prone to be stolen. Accordingly, it is readily apparent that exempting the delivery truck is not a proper or reasonable classification but is arbitrary, unreasonable and unjustly discriminatory; nor is there any rational or reasonable basis thus

making the classification arbitrary and erroneous all of which denies to the defendant equal protection of the laws . . ." (App. C).

Thereafter, appellees filed a petition for writ of certiorari in the Supreme Court of Florida directed to the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. The essence of appellees' argument in the Supreme Court was (i) the statute should be presumed to be constitutional; (ii) the statute was enacted pursuant to the police power; (iii) there was no showing beyond a reasonable doubt that the exception for delivery vehicles was arbitrary and unreasonable and that there were absolutely no facts reasonably conceived which would sustain the constitutionality of the statute; and (iv) the classification will not offend the Constitution because it is not made with mathematical precision or because it results in some inequality.

An order to show cause was issued by the Florida Supreme Court. Appellant filed a response as to why the petition should not be granted. The thrust of appellant's response was that the Supreme Court had earlier in its four-to-three decision in *Vining v. Avis Rent-A-Car System, Inc.*, 354 So.2d 54 (Fla. 1977) ruled that §316.097 [316.1975], *supra*, as part of the "Florida Uniform Traffic Control Law", Chapter 71-135, Florida Laws (1971), *was enacted mainly to promote the overall safety of the state's highway system*, not merely to reduce automobile thefts.

In this respect the Supreme Court held:

"The legislature recognized that an automobile placed in the hands of an unauthorized person was more likely to be operated in a manner hazardous to the well being of the general public. Statistical data provided strong support for this position . . .

"Turning to plaintiff's complaint, he is clearly a member of the class Florida's 'Unattended Motor Vehicle' statute was intended to protect. Also, the injuries he sustained were the type the statute was designed to prevent."

If indeed the legislative scheme was not merely to reduce motor vehicle thefts but to protect members of the public from the hazardous driving of the motor vehicle thief, it is patently evident that a delivery vehicle to be exempted from the requirements of the statute is antithetical to the legislative purpose of protecting the public.

Thus the Dade Circuit Court was eminently correct in holding:

"[I]t is really apparent that exempting the delivery truck is not a proper or reasonable classification but is arbitrary, unreasonable, and unjustly discriminatory; nor is there any rational or reasonable basis thus making the classification arbitrary and erroneous, all of which denies to the defendant equal protection of the laws . . ." (App. C).

Following oral argument the Supreme Court rendered a decision reversing the trial court's determination that the Unattended Motor Vehicle statute was repugnant to the equal protection of the laws clause of the Fourteenth Amendment.

The dissenting opinion reads in part: (App. A)

"I would hold that section 316.1975, Florida Statutes (1977), is unconstitutional as a denial of equal protection of the laws.

"The statute establishes a classification that does not rest upon a ground having a reasonable relation to the objective of the legislation. The purpose of the legislation is to prevent motor vehicle theft and to protect the public from hazardous driving by automobile thieves. A delivery vehicle is just as capable of being stolen if left unattended with the key in the ignition as is any other kind of motor vehicle. The fact that, without the exception for delivery vehicles, the law would inconvenience the owners and operators of such vehicles is no rational basis for the exception. The law inconveniences the owners and operators of all motor vehicles coming within the statute."

THE QUESTION IS SUBSTANTIAL

A novel and substantial Fourteenth Amendment — Equal Protection of the Laws question is presented to this Court.

It cannot be gainsaid that the statute was passed because there was an evil at hand that needed correction and a particular legislative measure was promulgated to correct that evil. Notwithstanding no member of this Court could possibly opine any sound reason for excepting delivery vehicles as a rational way to reduce thefts of motor vehicles and to protect the public.

The wisdom of the Supreme Court of Florida will be challenged each time a delivery vehicle is stolen when left unattended with the key in the ignition and said vehicle is negligently operated so as to seriously injure or kill members of the public.

The Supreme Court of Florida in its reversal without opinion relied upon this Court's case of *City of New Orleans v. Dukes,* 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976), in support of its decision that the statute in question did not deny the petitioner Equal Protection of the Laws in violation of the Fourteenth Amendment.

In determining some of the policy reasons for the judiciary not to interfere with state legislative regulations, this Court states in *Dukes:*

> "In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines, see, e.g., *Day-Brite Lighting, Inc. v. Missouri,* 342 US 421, 423, (6 L.Ed.469, 72 S.Ct.405 (1952); in the local economic sphere, it is only the invidious

> discrimination the wholly arbitrary act, which can not stand consistently with the Fourteenth Amendment. See e.g., *Ferguson v. Skrupa,* 372 US 726, 732, 10 L.Ed.2d 93, 93 S.Ct.1028, 95 ALR2d 1347 (1963)."

In the instant case the Florida Legislature favored delivery vehicles with an exception which affected the fundamental rights of all the other motorists in the State of Florida, those driving into the State of Florida, and the class intended to be protected by the Statute. This favored treatment by the Legislature of delivery vehicles clearly and unequivocally proceeded along "suspect lines".

The Legislature in the Preamble to the Act establishing the traffic code for the State of Florida made repeated references to the National Committee of Uniform Traffic Laws and Ordinances. The Uniform Vehicle Code and Model Traffic Ordinances, revised Edition 1968, which Code was promulgated by the aforesaid committee makes no exception for delivery vehicles in its Unattended Motor Vehicle statute. In similar manner the National Committee on Uniform Traffic Laws in Traffic Laws Annotated (1972) makes no such exemption of delivery vehicles and indicated in its historical note that Florida exempted delivery vehicles from the requirement to stop the engine, lock the ignition and remove the key when the vehicle is unattended (TLA §11-1101 (1972)).

This Court should not bury its head beneath the sand where a state statutory classification is so patently arbitrary in favoring a particular business segment by

granting an exemption not based on any rational basis. The challenged exception endangers the public and violates the equal protection clause of the Fourteenth Amendment.

CONCLUSION

For these reasons the Court should take probable jurisdiction of this appeal.

Respectfully submitted,

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Appendix

Appendix A

Charlie VINING and Velma Vining, his wife, Petitioners,

v.

AVIS RENT-A-CAR SYSTEMS, INC. Respondent.

No. 56897.

Supreme Court of Florida.

Nov. 21, 1979.

Rehearing Denied Jan. 23, 1980.

Certiorari to Circuit Court, Dade County; John Gale, Judge.

Sheridan Weissenborn, of Papy, Duval & Poole, Coral Gables, for petitioners.

Robert L. Dube and Richard M. Gale, Miami, for respondent.

PER CURIAM.

Reversed. *See City of New Orleans v. Dukes,* 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976); *Katzenbach v. Morgan,* 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966); *Williamson v. Lee Optical Co.,* 348 U.S. 483, 75 S.Ct. 461, 99 L.Ed. 563 (1955); *Lasky v.*

State Farm Insurance Co., 296 So.2d 9 (Fla. 1974); *Finlayson v. Conner*, 167 So.2d 569 (Fla.1964); *Riley v. Lawson*, 106 Fla. 521, 143 So. 619 (1932).

It is so ordered.

ENGLAND, C.J., and ADKINS, OVERTON, SUNDBERG and ALDERMAN, JJ., concur.

BOYD, J., dissents with an opinion.

BOYD, Justice, dissenting.

I respectfully dissent from the decision of the majority. I would hold that section 316.1975, Florida Statutes (1977),[1] is unconstitutional as a denial of equal protection of the laws.

The statute establishes a classification that does not rest upon a ground having a reasonable relation to the objective of the legislation. The purpose of the legislation is to prevent motor vehicle theft and to protect the public from hazardous driving by automobile thieves. A delivery vehicle is just as capable of being stolen if left unattended with the key in the ignition as is any other kind of motor vehicle. The fact that, without the exception for delivery vehicles, the law would inconvenience the owners and operators of such vehicles is no rational basis for the exception. The law inconveniences the owners and operators of all motor vehicles coming within the statute.

We should hold the statute unconstitutional so that the plaintiffs will have to establish negligence under general principles of our tort law without relying on the statute to show violation of a duty of care.

Appendix B

Supreme Court of Florida

WEDNESDAY, JANUARY 23, 1980

CASE NO. 56,897

In the Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida 74-11394

CHARLIE VINING, et ux,
Petitioners,

v.

AVIS RENT-A-CAR SYSTEMS, INC.,
Respondent.

Upon consideration of the Petition for Rehearing filed by the attorneys for Respondent,

IT IS ORDERED by the Court that said Petition be and the same is hereby denied.

ENGLAND, C.J., ADKINS, OVERTON, SUNDBERG and ALDERMAN, JJ., concur BOYD, J., dissents

Appendix C

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

CASE NO. 74-11394 — DIV. 07

GENERAL JURISDICTION DIVISION

CHARLIE VINING and VELMA VINING wife of CHARLIE VINING,
Plaintiffs,

vs.

AVIS RENT-A-CAR SYSTEMS, INC.,
Defendant.

AMENDED ORDER DETERMING §316.097, FLA. STAT., AND §30-249 OF THE METROPOLITAN DADE COUNTY CODE UNCONSTITUTIONAL

THIS CAUSE coming on to be heard before the Court upon Defendant's Motion for Determination of the Constitutionality Vel Non of the Florida Unattended Motor Vehicle Statute, to wit: Section 316.097, Fla.Stat. (1971), and Section 30-249 of the Metropolitan Dade County Code, and the Court after hearing argument of counsel and being fully advised in the premises, it is hereby

ORDER AND ADJUDGED that:

1. Section 316.097, Fla.Stat. (1971), and Metropolitan Dade County Code §30-249, reading as follows:

> "No person driving or in charge of any motor vehicle except a licensed delivery truck, or other delivery vehicle while making deliveries, shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key. No vehicle shall be permitted to stand unattended upon any perceptible grade without stopping the engine and effectively setting the brake thereon and turning the front wheels to the curb or side of the street."

are hereby declared to be unconstitutional and void as both violate the Fourteenth Amendment of the United States Constitution in denying to the defendant equal protection of the laws and due process of law contrary to §1 of the 14th Amendment reading:

> ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

2. Similarly the statute and ordinance violate Article 1, §2 of the Florida Constitution that "All natural persons are equal before the law . . . ." and violate Article 1, §9, Florida Constitution, providing:

> "No person shall be deprived of life, liberty or property without due process of law . . ."

3. Both the unattended motor vehicle statute and the Dade County ordinance arbitrarily and unreasonably exempt a licensed delivery truck or other delivery vehicle while making deliveries from the restrictions imposed by the statute and ordinance on the defendant.

4. The exemption of delivery trucks from the restrictions imposed by the statute constitute an unreasonable classification and a classification based upon no practical differences.[1] Further, the said statute and ordinance create an exception without any rational or reasonable basis thus creating a legislative classification which is purely arbitrary and erroneous.

5. It is patently evident that allowing a delivery truck to be exempt from the requirements of the statute is antithetical to the legislative scheme of protecting the public, inasmuch as, this type of vehicle by being permitted to stand unattended with the engine running (and merchandise, etc., inside) is more prone to be stolen. Accordingly, it is readily apparent that exempting the delivery truck is not a proper or reasonable classification but is arbitrary, unreasonable, and unjustly discriminatory; nor is there any rational or reasonable basis thus making the classification

[1]The Court finds that the plaintiffs' argument that the delivery trucks are reasonably classified in the statute as the same are part of a commercial enterprise to be without merit. For, it could be similarly argued that a rental company is a commercial enterprise and should likewise enjoy a favored legislative exemption for the purpose of leaving the key in the ignition of it's rental automobiles at its place of business (as alleged in the Third Amended Complaint).

arbitrary and erroneous all of which denies to the defendant equal protection of the laws and due process of law.

DONE AND ORDERED at Miami, Dade County, Florida, this 1st day of May, 1979.

JUDGE JOHN GALE
CIRCUIT JUDGE

Appendix D

IN THE SUPREME COURT OF FLORIDA

NO. 56,897

CHARLIE VINING and VELMA VINING,
his wife,

Petitioner,

vs.

AVIS RENT-A-CAR SYSTEMS, INC.,
Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Avis Rent-A-Car, Systems, Inc., the respondent above named, appeals to the Supreme Court of the United States from the final Order and decision of the Supreme Court of Florida; reversing the Amended Order Determining §316.097, Fla.Stat. and §30-249 of the Metropolitan Dade County Code Unconstitutional, of the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, entered herein on November 21, 1979. A timely petition for rehearing was denied January 23, 1980.

This appeal is taken pursuant to 28 U.S.C. §1257.

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/s/ RICHARD M. GALE
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Notice of Appeal was sent priority mail to Papy, DuVal & Poole, 201 Alhambra Circle, Suite 502, Coral Gables, Florida 33134, Attorneys for Petitioners/Appellees, this 11 day of April, 1980.

/s/ RICHARD M. GALE